

1 Evidence is the testimony received from the  
2 witnesses, exhibits admitted during the trial and  
3 any facts agreed to by counsel. Evidence does not  
4 include answers that you were instructed to  
5 disregard or the opening statements and the closing  
6 arguments of counsel.

7 You must not speculate as to why the Court  
8 sustained the objection to any question, nor what  
9 the answer to such a question might have been.

10 You must not draw any inference or  
11 speculate upon the truth of any suggestion included  
12 in a question that was not answered.

13 Evidence may be direct or circumstantial  
14 or a combination of the two.

15 Direct evidence is testimony given by a  
16 witness who has seen or heard the facts to which he  
17 testifies. It include exhibits admitted into  
18 evidence during the trial.

19 Circumstantial evidence. Circumstantial  
20 evidence is the proof of facts by direct evidence  
21 from which you may infer other related reasonable  
22 facts or conclusions.

23 You may not make one inference from  
24 another inference, but you may draw more than one  
25 inference from the same facts or circumstances.

**EXHIBIT****2**

1                   Circumstantial evidence and direct  
2                   evidence inherently possess the same probative  
3                   value and, therefore, should be subjected to the  
4                   same standard of proof.

5                   Credibility. You, the jury, are the sole  
6                   judges of the facts, the credibility of the  
7                   witnesses and the weight of the evidence.

8                   To weigh the evidence you must consider  
9                   the credibility of each person who testified. You  
10                  will apply the tests of truthfulness which you  
11                  apply in your daily lives. These tests include the  
12                  appearance of each witness upon the stand, his  
13                  manner of testifying, the reasonableness of his  
14                  testimony, the opportunity that he had to see, hear  
15                  and know the things concerning which he testified,  
16                  his accuracy of memory, frankness or lack of it,  
17                  intelligence, interest and bias, if any, together  
18                  with all of the facts and circumstances surrounding  
19                  the testimony.

20                  Applying these tests, you will assign to  
21                  the testimony of each witness such weight as you  
22                  deem proper.

23                  You are not required to believe the  
24                  testimony of any witness simply because he or she  
25                  was under oath. You may believe or disbelieve all

1 to testimony.

2 Exhibits. A number of exhibits and  
3 testimony relating to them were introduced. You  
4 will determine what weight, if any, the exhibits  
5 should receive in the light of all of the evidence.

6 Sympathy and antipathy. Circumstances in  
7 the case may arouse sympathy or antipathy for one  
8 person or another. Sympathy and antipathy are  
9 common human experiences. The law does not expect  
10 you to be free of such normal reaction.

11 However, the law and your oath as jurors  
12 requires you to disregard sympathy and antipathy  
13 and to permit neither of them to influence your  
14 verdict.

15 Definitions. At this point, the Court  
16 will define for you certain words that will be used  
17 in the balance of the instruction.

18 Purpose. You will hear the word purpose  
19 or purposely. A person acts purposely when it is  
20 his specific intention to cause a certain result.

21 Complicitor. Mere presence at the scene  
22 of a crime does not make one guilty of the crime,  
23 nor does mere observation of the crime, nor does  
24 mere association with the perpetrator of the crime,  
25 nor does mere failure to object to the crime.

1 In order to show complicity, it is upon  
2 the State to establish that the defendant took some  
3 affirmative action to assist and to encourage or  
4 participate in the principal offender's commission  
5 of the crime by some act, deed, word or gestures.

6 The prosecution does not contend that  
7 these defendants were the only offenders and that  
8 they alone personally performed every act necessary  
9 to commit the crime.

10 A person can commit a crime without  
11 performing each and every act which constitutes the  
12 crime if he acted as an aider and abetter in  
13 committing with the present offense.

14 One could be guilty of the offense as  
15 principal offender or complicitor. One is liable  
16 as a complicitor for the criminal acts of another  
17 if he purposely or knowingly solicited or procured  
18 or aided or abetted another in committing the  
19 offense.

20 Solicit means to seek, to ask, to  
21 influence, to invite, to attempt, to lead on, to  
22 bring pressure to bear.

23 Procure means to get, obtain, induce,  
24 bring about, motivate.

25 Aid means to help, assist or strengthen.

1 Abet means to encourage, counsel, incite  
2 or assist.

3 To be guilty as a complicitor, the  
4 defendant must act with the degree of culpability  
5 required for the commission of an offense.

6 Degree of culpability refers to the mental  
7 state required for the offense. The mental state  
8 required for murder is purposely.

9 If you find beyond a reasonable doubt that  
10 two or more persons have had a common purpose to  
11 commit an offense or offense, that one performed  
12 one part of the criminal conduct which constituted  
13 the offense or offenses and the other performed  
14 another part of the criminal conduct, then both are  
15 equally guilty, and your verdict as to the offender  
16 who performed the lesser part will be guilty of  
17 whatever offense was, in fact, committed.

18 The complicitor is treated as if being the  
19 principal offender and is as guilty as if he  
20 personally performed every act or element  
21 constituting the offense.

22 Summary. In review, then, because you  
23 could find a defendant guilty as an aider and  
24 abettor in this case, you must find beyond a  
25 reasonable doubt the following elements:

1                   One, that the offense of murder was, in  
2                   fact, committed.

3                   Two, that the particular defendant aided  
4                   or abetted another person in committing the conduct  
5                   constituting that offense.

6                   Three, that the particular defendant  
7                   engaged in criminal activity constituting the  
8                   offense of murder with the same mental state as the  
9                   other individual or individuals who committed the  
10                  crime of murder.

11                  Guilt or innocence. If the prosecutor has  
12                  proved all of the essential elements of an offense  
13                  beyond a reasonable doubt, you must find the  
14                  defendant guilty of that offense.

15                  If the prosecution failed to prove any one  
16                  of these essential elements of an offense beyond a  
17                  reasonable doubt, you must find the defendant not  
18                  guilty of that offense.

19                  Charges against the defendant. The  
20                  defendants are each charged with murder, an offense  
21                  described in Section 2923.02 (A) of the Ohio  
22                  Revised Code.

23                  Definition of murder. Murder is defined  
24                  as follows: No person shall purposely cause the  
25                  death of another.